

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : 09-CR-405

-against- US District Court
Central Islip, NY
FREDERICK CELANI,
Defendant. : October 16, 2009
- - - - - X 3:30 pm

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ARTHUR D. SPATT
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

BENTON J. CAMPBELL
United States Attorney
One Pierrepont Plaza
Brooklyn, New York 11201
By: RICHARD LUNGER, ESQ.
United States Attorney

For the Defense:

JAMES NEVILLE, ESQ.

Also Present:

MATTHEW GALIOTO - FBI

Court Reporter:

Dominick M. Tursi, CM, CSR
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1 (Call to Order of the Court. Appearances stated
2 as indicated above.)

3 THE COURT: What is happening here, Mr. Lunger?

4 MR. LUNGER: Your Honor, prior to the last
5 status conference, the government wrote to Mr. Neville and
6 told him that we have available to turn over a compact
7 disk which contains a number of documents that had been
8 seized from the offices of Rainmaker, which was the
9 company that the government alleges the defendant headed
10 up.

11 That disk is ready to be turned over. It has
12 been for over a month now. But one of the things we have
13 asked the defendant to do is to sign a stipulated
14 protective order.

15 And the reason we have done that is, there are
16 certain confidential information of victims in these
17 documents, things like addresses, social security numbers,
18 and the like, which we obviously don't want going into the
19 prison facility. I believe the defendant is in MDC right
20 now.

21 I have spoken to Mr. Neville just a few minutes
22 ago and he has told me the defendant is not willing to
23 sign this order. So the government proposes that it be
24 submitted to your Honor for consideration, and the
25 defendant can make any objections he wants to it but that

1 it can be adjudicated along those lines.

2 Secondly, at the last status conference I
3 advised the court that the government, specifically the
4 FBI, was in the process of indexing computer data that was
5 contained on 11 hard drives, again that had been seized
6 from the Rainmaker premises. My understanding is that
7 three out of those 11 hard drives have now been indexed in
8 a manner that can be searched.

9 Before they are turned over to the defense, two
10 things need to happen. One, we have an analyst at the FBI
11 who has been walled off from the case whose job it will be
12 to go through those hard drives to make sure there is no
13 attorney-client privileged information on them.

14 The court may recall, last time we were
15 concerned that at least two of the hard drives seized may
16 have been used by practicing attorneys. So what is going
17 to happen is, next week the analyst is going to start
18 going through these three hard drives to determine whether
19 there is any attorney-client privileged information. If
20 there isn't, they will be turned over to the defense. And
21 again, we would like these hard drives to be subject to
22 the protective order.

23 So as a preliminary matter, we believe that the
24 court would need to consider whether a protective order is
25 appropriate in the first instance in this case.

1 THE COURT: What is the nature of the charge in
2 the case?

3 MR. LUNGER: The charge is, it is a Ponzi
4 scheme, your Honor, that is being alleged. So it is a
5 one-count indictment at this point alleging a wire fraud
6 conspiracy.

7 THE COURT: Mr. Neville?

8 MR. NEVILLE: Your Honor, first, in terms of the
9 protective order.

10 My client respectfully takes the position that
11 there is no secret to any of the information that was
12 seized from this location, the search by the government,
13 and that most respectfully our position is we have a right
14 to examine all of the materials that were present in this
15 office.

16 Mr. Celani was working in this office, was
17 spending many hours in that office, and was in fact privy,
18 either explicitly or certainly potentially privy, to
19 everything, all materials that were in that office.

20 So it makes no sense that now, when Mr. Celani
21 is in a position to defend himself from these serious
22 charges, that the government place an obstacle so that we
23 cannot examine all of the materials and pick and choose
24 what we believe potentially could be material that we
25 could use for Mr. Celani's defense.

1 Secondly, the hard drives that Mr. Lunger has
2 explained to the court that are being prepared by an FBI
3 analyst, as Mr. Lunger said there is an FBI analyst who
4 is, as Mr. Lunger stated, walled off from this case where
5 that analyst is examining for possible attorney-client
6 privileged information, that Mr. Lunger says there may
7 have been practicing lawyers working in that office.

8 In fact there were practicing lawyers in that
9 office, and Mr. Celani again was privy to everything that
10 was going on in the location. So it makes no sense, we
11 state respectfully, that we now be prevented from seeing
12 everything that Mr. Celani was seeing and could have been
13 seeing prior to his arrest.

14 So we state respectfully that this is a
15 mechanism, whether it is intentional or not, but it is a
16 mechanism that prevents us, it is an obstacle that the
17 government is constructing that is preventing Mr. Celani
18 and counsel from properly preparing his defense.

19 THE COURT: When you say that you are not being
20 given all the material, I didn't hear anything about that.
21 All they say is they want to mark it confidential or under
22 a protective order so that you won't distribute it to the
23 press or to Mr. Celani's family or to the Republican Party
24 or -- who else? -- Rush Limbaugh. That is all they say.
25 They are going to give you all the material.

1 MR. NEVILLE: Then perhaps --

2 THE COURT: I think isn't this so --

3 MR. LUNGER: Our primary concern, your Honor,
4 is, we don't want the information to go back to MDC. That
5 is our primary concern.

6 The way the protective order is set up is that
7 both the defendant and his lawyer can review it. But at
8 the end of the day, once the defendant is done reviewing
9 the materials, we don't want that privileged information
10 to go back to the jail.

11 THE COURT: But it can go to the attorney.

12 MR. NEVILLE: Absolutely, your Honor.
13 Absolutely. I'm ready to hand him the disk. He can have
14 the disk. Keep it under lock and key in the office.

15 THE COURT: You are going to get all the
16 material. It is not a pick and a choose. You will get
17 everything.

18 MR. NEVILLE: I understand, your Honor. Then it
19 was my misunderstanding.

20 Is it then permissible that I bring materials to
21 the jail to review them with Mr. Celani?

22 THE COURT: Certainly.

23 MR. NEVILLE: Potentially. But then bring them
24 back with me and not leave anything with him.

25 THE COURT: That's right. You can bring it to

1 the jail.

2 MR. NEVILLE: That is fine then, your Honor. It
3 was my misunderstanding then.

4 We are prepared to then sign the protective
5 order.

6 THE COURT: Okay. What else is happening?

7 MR. LUNGER: That is essentially the latest,
8 your Honor.

9 Like I said, the next step will be to go through
10 these hard drives and as the analyst goes through them, if
11 there is any allegedly privileged information, it will be
12 exported from the hard drive but what remains will go over
13 to the defendant. Anything that is exported, if your
14 Honor so desires we can submit in camera and your Honor
15 can decide whether it is appropriate to be turned over.

16 I would like nothing more than to be able to
17 hand those hard drives over to Mr. Neville and be done
18 with it. But we are proceeding with caution because we
19 don't know what is on there yet.

20 THE COURT: Anything that you extract or delete,
21 you will show to me.

22 MR. LUNGER: Yes, your Honor.

23 THE COURT: And I will decide whether it goes to
24 them or not.

25 MR. LUNGER: Yes, your Honor.

1 THE COURT: So where are we going from here?
2 Assume that that happens. How much time do we need now?
3 Are we near a trial in this case?

4 MR. LUNGER: I don't think so.

5 Until all the hard drives are turned over, your
6 Honor -- and I have been told by FBI that it will probably
7 be at least another two or three weeks until all of the
8 hard drives have been indexed, meaning it will take two or
9 three more weeks to get the hard drives in a state where
10 an analyst can sit down and start searching, putting
11 search terms into these hard drives and be able to
12 determine whether there is anything more on them.

13 So in terms of a trial date, I don't know if we
14 are in a position to set one just yet, your Honor.

15 THE COURT: What do you say, Mr. Neville?

16 MR. NEVILLE: Your Honor, I wanted to ask the
17 court on another matter whether the circuit made any
18 contact with the court sending to the court a proposed
19 order.

20 If your Honor recalls, I think two court dates
21 ago I brought up the idea of having this case budgeted;
22 that I would prepare a budget for the case because of all
23 the discovery; that I had spoken with Mr. Tritz in the
24 Circuit Executive's office, he deals with CJA cases and
25 death penalty cases that need to be budgeted and what they

1 term makeup cases or cases with a large volume of
2 discovery that they are encouraging judges to potentially
3 order be budgeted from a standpoint of the CJA counsel.

4 And I spoke with an investigator. Your Honor
5 approved up to \$2,500 for an investigator. But I spoke
6 with a law student or a paralegal or an associate attorney
7 to work with me on the case. And your Honor asked how
8 much that would be, how much those people would be paid,
9 et cetera. I spoke with Mr. Tritz approximately two weeks
10 ago and he informed me that he would be sending to the
11 court a proposed order and that proposed order would lay
12 out or outline all of the potential expenses in the case.

13 I just wondered if the court had received that
14 proposed order.

15 THE COURT: Not that I know of. I did not
16 receive it. You better call Mr. Tritz and tell him to
17 send it right away because I will sign such an order
18 giving you the right to have assistance.

19 MR. NEVILLE: Thank you, your Honor.

20 Finally, your Honor, I wanted to just thank the
21 court. Mr. Celani thanks the court for being moved from
22 Nassau County to the MDC, in Brooklyn, where Mr. Celani is
23 able to access the law library. However, respectfully,
24 Mr. Celani is asking the court to intervene with the MDC,
25 to contact the MDC indicating that Mr. Celani needs more

1 time in the law library there.

2 I will remind the court. The court may remember
3 that Mr. Celani, in addition to this case, this criminal
4 matter, that he is interested in participating vigorously
5 in his defense. If you recall, there was a time when
6 Mr. Celani was making application to represent himself in
7 this case. And he has agreed to have me represent him but
8 he still is very much involved in the preparation of his
9 defense.

10 But additionally, your Honor, Mr. Celani has at
11 least two civil matters that he is representing himself
12 on. There is a matter where the Securities and Exchange
13 Commission sued Mr. Celani. And also Mr. Celani is a
14 plaintiff in another civil lawsuit in this courthouse, I
15 think before Judge Bianco.

16 So Mr. Celani is respectfully requesting that
17 this court would consider contacting the education
18 department at the MDC where Mr. Celani was told that if
19 the court contacts the education department and
20 understands from the court that Mr. Celani needs more time
21 in the law library, that the education department will
22 approve Mr. Celani getting more time in the law library
23 for his various cases.

24 THE COURT: Well, you send me a letter telling
25 me what time he gets now and how much he wants. I will

1 review that and if I think it is advisable, I will so
2 order it.

3 MR. NEVILLE: Thank you, your Honor.

4 THE COURT: But of course you know it is only a
5 recommendation.

6 MR. NEVILLE: Yes, your Honor.

7 THE COURT: It is up to the Bureau of Prisons
8 what they want to do in their facility.

9 MR. NEVILLE: That is what the MDC is looking
10 for, some kind of input from the court that the court
11 would approve.

12 THE COURT: You sent me a letter requesting
13 that.

14 MR. NEVILLE: Thank you.

15 THE COURT: Anything else, Mr. Neville?

16 MR. NEVILLE: Nothing further. Thank you, your
17 Honor.

18 THE COURT: How much time do you think we should
19 have until the next status conference?

20 MR. LUNGER: Perhaps 45 days, your Honor.

21 MR. NEVILLE: That is fine with us, your Honor.

22 THE COURTROOM DEPUTY: December 4 at 1:30.

23 THE COURT: Friday, December 4, at 1:30?

24 MR. NEVILLE: Fine. Thank you.

25 MR. LUNGER: Fine, your Honor.

1 THE COURT: Does your client understand about
2 waiving speedy trial, Mr. Neville?

3 MR. NEVILLE: Yes, he does, your Honor. We will
4 sign the document to waive speedy trial.

5 MR. LUNGER: Your Honor has also designated it a
6 complex case.

7 THE COURT: Notwithstanding that I always like
8 to get a signed waiver and to make a pronouncement.

9 The court notes that the defendant, his counsel,
10 and the prosecutor have signed a waiver of speedy trial
11 form. And I am signing an order excluding the time from
12 today, October 16, 2009, to December 4, 2009, from the
13 operation of the Speedy Trial Act. I do this not only
14 because this is a complex case but with the consent of the
15 defendant, in the interests of justice under the
16 circumstances involving discovery here, and in the public
17 interest of a fair trial.

18 We will see you on December 4.

19 MR. LUNGER: Thank you, your Honor.

20 MR. NEVILLE: Thank you, your Honor.

21 Just for the record, Mr. Celani has prepared I
22 think his signature. Mr. Celani's signature is also
23 necessary for the protective order. So we are prepared to
24 sign that now.

25 THE COURT: Go ahead.

1 Let the record indicate that the order has been
2 signed. Correct?

3 MR. NEVILLE: Correct.

4 MR. LUNGER: Yes. It is signed by the defendant
5 and both counsel.

6 THE COURT: Thank you very much.

7 (Proceedings adjourned at 3:50 pm.)
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